REMARKS

Previously presented claims 1-11 were and still are pending in this application, as no claims have been amended, added, or cancelled.

35 U.S.C. §103 Rejections

Claims 1-3, 5, 7-9, and 11 stand rejected under 35 U.S.C. §103(a) for obviousness over U.S. Pat. App. Pub. No. 2001/0031066 to Meyer et al. (hereinafter "the Meyer publication") in view of U.S. Pat. App. Pub. No. 2004/0019608 to Obrador. Claims 4, 6, and 10 stand rejected under 35 U.S.C. §103(a) for obviousness over the Meyer publication in view of the Obrador publication and further in view of U.S. Pat. App. Pub. No. 2004/0060070 to Mizushima or U.S. Pat. App. Pub. No. 2003/0163823 to Logan et al.

The Examiner acknowledges that the limitation relating to the reproducing time period being defined as a length of the digital audio file is not disclosed in the Meyer reference, but asserts that this limitation is disclosed in the Obrador publication and that it would have been obvious to combine the teachings of the references.

Applicants hereby submit a Declaration Under 37 CFR § 1.132 in which Mr. Myung Gu Kim, the CEO of the assignee of the present application, attests in §3 that he has reviewed the cited prior art and Examiner's obviousness rejection and observes the following:

> The Obrador publication discloses a management system for organizing media objects (e.g., videos, pictures) in relation to each other based on shared characteristics of the media objects. The characteristics may be substantive content of the media objects or metadata associated with each object. Paragraph [0054] of the Obrador publication discloses the aspect of selecting related media objects using playback length. The Examiner's reasoning for combining the teachings of the Meyer publication with that of the Obrador publication relates to selecting media objects having the highest metadata similarity. However, neither this motivation nor the cited playback length disclosure relates to *differentiating between <u>different</u>* files, as is the purpose of the claimed invention (i.e., the ability to differentiate between files based on the length of each respective digital audio file is useful because there may be different versions of the same song). In fact, paragraph [0054] of Obrador states that "the relevance criteria used to select the media objects that will be presented contemporaneously with the selected media file may relate to a selected metadata *<u>similarity</u>* between media objects and the selected media file" (emphasis added). Thus, the playback length data is used to group related files together, as opposed to identifying a unique, particular file.

Mr. Kim then concludes that "a person having ordinary skill in the art would not look to the Obrador reference as it teaches away from any desire to combine the disclosure thereof with that of the Meyer publication."

The Court of Appeals for the Federal Circuit stated in *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538, 218 USPQ 871, 879 (Fed. Cir. 1983) that "evidence rising out of the so-called 'secondary considerations' [such as commercial success] must always when present be considered en route to a determination of obviousness" (*See also KSR v. Teleflex*, 550 U.S. 398). Mr. Kim sets forth in §2 of the Declaration that:

> [t]he claimed invention is embodied in software that is operating on various electronics devices including MP3 music players, PMPs (personal media player), and MID players (Mobile Internet Device) sold by other manufacturers. The software is licensed to these manufacturers. In 2009, the revenue received by the Assignee [of the present invention] associated with the licensing of the software to Samsung Electronics Co. and other manufacturers was approximately $1 million.

Thus, notwithstanding the substantive arguments set forth against the combination of the cited prior art, Applicants submit that the commercial success of the present invention, as evidenced by substantial sales thereof, should outweigh any asserted argument relating to obviousness. In light of the aforementioned arguments and §132 Declaration submission, Applicants hereby respectfully request reconsideration of the rejections and allowance of pending claims 1-11.

Respectfully submitted,

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